

JUDGE ABRAMS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

14 CV

618

WAYNE FERRELL,

Plaintiff,

-against-

CITY OF NEW YORK,

Defendant.

Civil Action No.:

COMPLAINT

JAN 31 2014

JURY TRIAL

DEMANDED S.D.C. S.D. N.Y.

CASHIERS

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Plaintiff, WAYNE FERRELL, by his attorney, George T. Peters, Esq.,

complaining of the defendants herein, respectfully alleges as follows:

PRELIMINARY STATEMENT

1. WAYNE FERRELL brings this action for compensatory damages, punitive damages and attorney's fees pursuant to defendant's violation of his civil rights secured by 42 U.S.C. §1983, 1985, 1986 and 1988, by the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution and under the laws of the State of New York. WAYNE FERRELL is a fifty-five (55) year old, Black male, citizen of the United States of America, the State of New York, County of New York.

2. WAYNE FERRELL was deprived of his constitutional and common law rights when defendants CITY OF NEW YORK through and its New York City Police Department agents, employees and/or officers falsely arrested and/or falsely imprisoned WAYNE FERRELL, were negligent in ignoring that WAYNE FERRELL was not the Wayne Ferrell they were looking for, and caused WAYNE FERRELL to become physically, psychologically and emotionally injured. CITY OF NEW YORK was negligent in hiring, retaining and not properly training and supervising its New York City Police Department employees.

JURISDICTION

3. This action is brought pursuant to Civil Rights Act, 42 U.S.C. §§ 1983, 1985, 1986 and 1988, and of rights secured by the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred upon this Court by 28 U.S.C. 1331 and 1343 and the aforementioned statutory and constitutional provisions.

4. Plaintiff further invokes this Court's supplemental jurisdiction, pursuant to 28 U.S.C. §1367, over any and all State law claims and causes of action which derive from the same nucleus of operative facts and are part of the same case or controversy that give rise to the federally based claims and causes of action.

VENUE

5. Venue is proper for the United State District Court for the Southern District of New York pursuant to 28 U.S.C. §1391(b) because the claims arose in this district.

JURY DEMAND

6. Plaintiff respectfully demands a trial by jury of all issues in this matter pursuant to Fed. R. Civ. P. 38(b).

PARTIES

7. Plaintiff WAYNE FERRELL is a male resident of the County of New York, City of New York in the State of New York.

8. Defendant CITY OF NEW YORK (hereinafter referred to as "CITY") is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York, and as such is responsible for the practices, policies and customs of

its agencies, New York City Police Department officials, as well as the hiring, screening, training, supervising, controlling and disciplining of those persons employed by its agencies.

9. Defendant, CITY, employs police officers through the New York City Police Department (hereafter referred to as "NYPD") and as such is responsible for the practices, policies and customs of NYPD.

STATEMENT OF FACTS

10. On or about November 19, 2013, WAYNE FERRELL, was arrested by NYPD for a felony.

11. WAYNE FERRELL's identification was stolen years ago.

12. While remanded, WAYNE FERRELL was labeled as "John Doe."

13. Apparently, there may be a Wayne Ferrell the police were looking for but his address is in Brooklyn, New York.

14. Plaintiff WAYNE FERRELL, resides in New York, New York.

15. NYPD held WAYNE FERRELL in jail for six (6) days on felony charges.

16. On or about November 25, 2013, WAYNE FERRELL was released after a New York Supreme Court Judge dismissed the charges against him as it was clear that he was not the Wayne Ferrell NYPD sought in connection with a felony.

17. CITY through NYPD should have investigated WAYNE FERRELL's identity and not deprived him of his civil rights

18. At all times mentioned herein, defendants acted intentionally, willfully, maliciously, negligently and with reckless disregard for and deliberate indifference to WAYNE FERRELL's civil rights.

FIRST CAUSE OF ACTION
Deprivation of Plaintiff's Federal Constitutional Rights
False Arrest

19. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 18 with the same force and effect as if fully set forth herein.

20. As a direct and proximate result of the defendants' actions, WAYNE FERRELL, was deprived of rights, privileges and immunities secured to him under the Constitution and laws of the State of New York and the United States, including, but not limited to his rights under the Fourth, Fifth, Eighth and Fourteenth Amendments and 42 U.S.C. §1983 to be secure in his person, to be protected against cruel and unusual punishment, to be provided with humane conditions of confinement, and to equal protection of the laws.

21. CITY established a custom, policy and/or practice of encouraging, approving and/or tolerating by NYPD's employees improper handling of civilians before, during and after arrests, and subsequent attempts to conceal such actions while failing to adequately train, supervise and discipline its agents, employees and/or officers.

22. CITY and NYPD's actions in participating in, executing, causing to be executed, failing to intervene to cause the cessation of, approving or ratifying the arrest of the plaintiff WAYNE FERRELL violated the civil rights of the plaintiff pursuant to the First, Fourth, Fifth and Fourteenth Amendment to, and the Due Process Clause of the United States Constitution.

23. Defendants CITY and NYPD have adopted municipal policies, practices and customs that have caused the violation complained of herein; and in the alternate

have actual or constructive notice of a pattern of constitutional violations described herein and have failed to take action, thereby allowing the continuation of such a policy or custom, and causing the harms complained herein.

24. Defendants' actions were undertaken under the color of law and would not have existed but for said defendants' use of their official power.

25. The acts and omissions of defendant CITY violated the constitutional rights of the plaintiff WAYNE FERRELL.

26. Defendants CITY and NYPD have tolerated and failed to discipline and/or train officers regarding unlawful conduct towards persons, including specifically false arrest, thereby causing the violations complained of herein.

27. As a result of the aforesaid violation of WAYNE FERRELL's rights, he has sustained emotional, physical and psychological injuries.

28. That by reason of the foregoing, WAYNE FERRELL suffered serious physical and emotional injuries all to his damage in the sum of One Million Dollars (\$1,000,000.00) as to plaintiff.

SECOND CAUSE OF ACTION
False Imprisonment

29. Plaintiff WAYNE FERRELL repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 28 with the same force and effect as if more fully set forth at length herein.

30. At all times relevant herein all defendants acted with the intention of confining WAYNE FERRELL within fixed boundaries, the act directly or indirectly resulted in confinement, and WAYNE FERRELL was conscious of the confinement.

31. Defendants imposed by force or threats an unlawful restraint upon plaintiff WAYNE FERRELL's freedom of movement, to wit by arresting him and transporting him to a facility where he was detained in a cell for six (6) days.

32. As a direct and proximate result of the conduct of Defendants, WAYNE FERRELL, suffered harm and damages including but not limited to the aforesaid damages.

33. Defendant CITY is liable for NYPD's actions under the doctrine of respondeat superior.

34. As a result of the foregoing, WAYNE FERRELL seeks compensatory damages in the sum of One Million Dollars (\$1,000,000.00).

THIRD CAUSE OF ACTION
Negligence

35. Plaintiff WAYNE FERRELL repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 34 with the same force and effect as if more fully set forth at length herein.

36. The above-mentioned acts and conduct committed by defendant CITY constituted negligence for their failure to get WAYNE FERRELL the aid he needed, failure to follow NYPD rules and procedures and failure to otherwise handle the situation properly pursuant to the procedures and guidelines set forth by the NYPD, despite having reasonable opportunity to do so.

37. Defendant CITY, their agents, servants or employees acted negligently, carelessly and recklessly in allowing WAYNE FERRELL's rights to be violated.

38. As a result of the aforesaid, WAYNE FERRELL sustained injuries and damages previously described in this complaint.

39. As a result of the foregoing, WAYNE FERRELL seeks compensatory damages in the sum of One Million Dollars (\$1,000,000.00).

FOURTH CAUSE OF ACTION
Malicious Prosecution

40. Plaintiff WAYNE FERRELL repeats, reiterates and realleges each and every allegation contained in paragraphs marked 1 through 39 with the same force and effect as if more fully set forth at length herein.

41. THE CITY instituted criminal process against the plaintiff with malice.

42. The charges were not based upon probable cause, that is the state of the facts in the mind of the prosecutor would not lead a man of ordinary caution and prudence to believe, or entertain an honest or strong suspicion that WAYNE FERRELL was guilty.

43. Defendant has a duty to ascertain whether there was reasonable and probable cause for a prosecution.

44. Defendant breached its duty.

45. The criminal proceeding was terminated in favor of WAYNE FERRELL when the charges were dismissed by the Court.

46. As a result of the foregoing, WAYNE FERRELL seeks compensatory damages in the sum of One Million Dollars (\$1,000,000.00).

PRAYER FOR RELIEF

WHEREFORE, plaintiff WAYNE FERRELL demands the following relief jointly and severally against all defendants as follows:

(1) On the FIRST CAUSE OF ACTION against defendants, compensatory and punitive damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00) as to Plaintiff;

(2) On the SECOND CAUSE OF ACTION against defendants, compensatory and punitive damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00) as to Plaintiff;

(3) On the THIRD CAUSE OF ACTION against defendants, compensatory and punitive damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00) as to Plaintiff;

(4) On the FOURTH CAUSE OF ACTION against defendants, compensatory and punitive damages in the amount of ONE MILLION DOLLARS (\$1,000,000.00) as to Plaintiff;

(5) That Plaintiff recovers the cost of the suit herein, including reasonable attorneys' fees pursuant to 42 U.S.C. §1988; and

(6) That Plaintiff has such other and further relief, as this Court shall deem just and proper.

Dated: January 27, 2014
New York, New York



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